



# Public Service Commission

## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** November 28, 2000  
**TO:** Division of Records and Reporting  
**FROM:** Division of Legal Services (Van Leuven) *DL*  
**RE:** Docket No. 000079-SU - Complaint by Sunset Ventures of Key West, Inc. against K W Resort Utilities Corp. for discontinuance of service in violation of service availability agreement in Monroe County.

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Please file the attached letter dated November 22, 2000, in the docket file for the above-referenced docket.

DTV/dm

cc: Division of Economic Regulation (Rendell)

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- CMP \_\_\_\_\_
- COM \_\_\_\_\_
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FPSC-RECORDS/REPORTING

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November 22, 2000

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OF COUNSEL

Tyler Van Leuven, Esquire  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: K.W. Resort Utilities Corp.;  
Complaint by Sunset Ventures of Key West, Inc.;  
Docket No. 000079-SU  
Our File No. 34000.02



Dear Tyler:

The purpose of this letter is to update you on the status of the discussions between K.W. Resort Utilities Corp. and Sunset Ventures of Key West, Inc. regarding the complaint filed by Sunset Ventures in the above referenced docket. At this time, it is my client's position that our efforts to resolve the dispute between the parties have proven unsuccessful.

As you know, the parties operate pursuant to a Contract for Wastewater Treatment dated August 15, 1998. Sunset Ventures is a bulk service customer of the Utility outside its certificated service area. Sunset Ventures filed a complaint on January 24, 2000 which objected to the discontinuation of service by K.W. Resort earlier that January. It is the Utility's position, explained in part through my correspondence dated April 26, 2000 in response to the Staff's request for information, that the disconnection was necessary and justified by the Developer's theft of service on more than one occasion. A copy of that letter is enclosed for your ready reference.

Despite the fact that KW Resort resumed service within days of the initial disconnection, the complaint proceeding has continued. Since that time, the docket has become a platform for the Developer's efforts to renegotiate the Contract for Wastewater Treatment entered into two years ago. The Developer is using the PSC as a vehicle in its attempt to pressure the Utility into rewriting substantive portions of the Contract completely unrelated to this Complaint. The Utility is not interested in doing so.

I note that the Complaint was filed pursuant to F.A.C. Rule 25-30.560 regarding developer agreement disputes, and Rule 25-22.023 regarding informal resolution of customer complaints. The Complaint seeks essentially two remedies. First, that the Utility resume service and second, that the

Tyler Van Leuven, Esquire  
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Utility abide by Commission rules in the future. As to the first, service was resumed within days of the cutoff and has continued to this day. The latter remedy is axiomatic a requirement of the Utility, and prospective in nature. As such, the Developer is anticipating a breach of the Agreement, or Commission rule, at some time in the future and is asking for the Commission to act on it now. It is not a proper basis for action by the Commission, and not one the Commission has historically recognized or considered. On this basis, no further action need be taken on the Complaint and the matter may be closed.

Thank you for your assistance in this matter. Should you have any questions or comments regarding this letter, please feel free to call.

Sincerely,



John R. Jenkins  
For the Firm

Dictated by Mr. Jenkins, but signed in  
his absence to avoid delay in mailing.

JRJ:dcr

cc: Mr. Doug Carter  
Bill Smith, Esquire  
Katherine Cowdery, Esquire

KWResort/Van Leuven4.ltr

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April 26, 2000

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Re: K.W. Resort Utilities Corp.;  
Docket No. 000079-SU; Complaint by Sunset Ventures  
Our File No. 34000.02

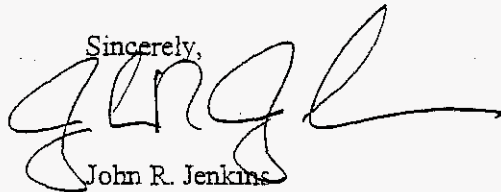
Dear Mr. Van Leuven:

In response to your letter dated February 10, 2000 in the above-referenced docket, enclosed please find a Response to Staff Data Request filed by K.W. Resort Utilities Corp. Also enclosed is a copy of my response Kathryn Cowdery's letter dated April 11 on which you were copied.

The basic problem is that Sunset Ventures has three components to its development, the facilities on the Marina side, the facilities on the condominium side, and the 139 boat slips. In each of these three cases, the Developer breached the Contract for Waste Water Treatment between the parties, initiated wastewater flows to the Utility without authorization, placed facilities in service prior to DEP authorization, and stole service from the Utility. The Developer intentionally violated the terms of the Contract and Public Service Commission rules. Please understand our lack of patience with this Developer following repeated occurrences of problems. The Utility's disconnection of service and other actions were a necessary and appropriate response to Developer's repeated theft of service.

Should you have any questions or comments regarding these matters, please feel free to call.

Sincerely,



John R. Jenkins  
For the Firm

JRJ:dcr

Enclosure

cc: Bill Smith, Esquire  
Mr. Doug Carter  
Kenneth Gatlin, Esquire

KWResort/Van Leuven2.ltr

**KW RESORT UTILITIES, CORP.**  
**RESPONSE TO PUBLIC SERVICE COMMISSION STAFF DATA REQUEST**  
**April 26, 2000**

The following responses are provided to the Staff Data Request dated February 10, 2000 on behalf of K.W. Resort Utilities Corp. Each question in the data request is restated in bold print with the response immediately following.

1. **Provide the date Sunset Ventures of Key West (Sunset Ventures) began transmitting and delivering wastewater to K.W. Resort Utilities Corp. (K.W. Resort).**

The following is a chronology of events which evidence the breach of Contract for Waste Water Treatment ("Contract") and theft of service by Sunset Ventures:

August 15, 1998 the Contract is entered into by the parties.

June 1, 1999 the Utility discovered wastewater flows entering the Key West Golf Course driving range manhole from Sunset Marina. The Utility had not authorized the initiation of service, DEP had not approved or certified completion of the collection system, all service availability charges had not been paid, and no payment was being made for service. The ability to send wastewater flows to the treatment plant was prevented when the Utility discontinued electric service to the lift station on this date.

On or about September 8, 1999, the DEP approved use of the collection/transmission system serving the Marina.

September 16, 1999, Utility resumed service to Sunset Marina following notice of DEP certificate of completion and approval of use of lines.

January 18, 2000, the Utility discovered unauthorized flows coming from the condominium side of the Sunset Ventures development. The Utility had not authorized the initiation of service, DEP had not approved or certified completion of the collection system, all service availability charges had not been paid, and no payment was being made for service. The ability to send wastewater flows to the treatment plant was prevented when the Utility discontinued electric service to the lift station and plugging the line on this date.

January 21, 2000, Developer obtains DEP certificate of completion for condominium side collection system..

February 25, 2000, pursuant to Developer's request, Utility and Developer's project manager inspect lift station and authorize testing of the electrical panel. Deficiencies are identified including requirement to trim impeller to commence service. No subsequent action is taken by Developer to make these minor improvements to the lift station.

Tyler Van Leuven, Esquire  
April 21, 2000  
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March 6, 2000, DEP issues a notice of violation to Sunset Ventures for placing collection system in service prior to approval and unauthorized pump-out system for boat waste based on January 19<sup>th</sup> inspection. (See letter attached)

- 2. Where is the point of delivery, as defined by Rule 25-30.210(7), Florida Administrative Code?**

The point of delivery is the service manhole on the southeast side of Junior College Road across from the entrance to Sunset Marina and adjacent to the 11<sup>th</sup> fairway of Key West Golf Course. The Utility's service area boundary is Junior College Road and the point of delivery is within the service area.

- 3. Does K.W. Resort consider the discharge of wastewater from boats or boat holding tanks, referenced in paragraph 10 of the Complaint, unauthorized usage pursuant to the Contract for Wastewater Treatment, paragraph 4, dated August 15, 1998?**

Yes. The Contract is quite specific and clear on this point. Sunset Ventures intentionally breached the Contract.

- 4. If known, provide the dates and amount of gallons of the discharge of wastewater from boats that occurred between October 25, 1999 and January 16, 2000.**

The Utility was not notified, and has no record as to the quantity of this unauthorized discharge. Due to the large number of boats at the Marina over the Christmas and New Year holidays, it is reasonable to believe that the discharge was substantially greater than 500 gallons. Sunset Ventures is now trying to downplay its breach of the Agreement.

In reviewing the Developer's Attachment "B" Pump Out History, it is worth noting that the Marina has a 1500 gallon storage tank for such waste. It is difficult to believe that the Developer went to the trouble of pumping out a single gallon, or two gallons, of waste into the Utility's system on a particular occasion, as stated in the Pump Out History.

Sunset Ventures billed its customers for the service of pumping out boat waste. The Company's should be required to produce all records to verify the number of boats pumped and the quantity of waste dumped.

- 5. At the time wastewater was delivered from the transmission lines connected to the marina, condominium units, and restaurant, had the wastewater lines been properly tested and certified by FDEP? If so, was a copy of the letter from FDEP authorizing use of the wastewater lines provided to K.W. Resort prior to transmission of wastewater?**

Please see the chronology of events in response to question 1. above.

6. **Who owns and maintains the collection lines, manholes, and lift stations referenced in the Contract for Wastewater Treatment, dated August 15, 1998?**

Sunset Ventures owns the lines and the Utility maintains the lines as provided for in the Contract.

7. **Paragraph 4 of the Contract for Wastewater Treatment, states that the wastewater lines, pipes, manholes and lift stations shall be the property of the Owner, however, the Company shall maintain and operate the collection system. Does Sunset Ventures pay K.W. Resort a fee or maintenance charge for the maintenance and operation of the collection system? If not, why not?**

No separate fee or maintenance charge is collected. The cost of this service is recovered in the Utility's rates.

8. **Is Sunset Ventures in the existing certificated service territory of K.W. Resort?**

No. This is stated in the fifth "Whereas" clause on page one of the Contract. Also, see response to question 2. above.

9. **If known, please state the measures taken by Sunset Ventures to insure that no future discharge of boat or boat holding tank wastewater occurs.**

Measures were taken by the Utility. By that time, Sunset Ventures had already breached the specific Contract prohibition against such a discharge on at least 19 separate occasions by its own admission. The Utility put its own locks on the lift stations to prevent the continuing breach of the Contract.

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Re: K.W. Resort Utilities, Inc.;  
Complaint by Sunset Ventures  
Our File No. 34000.02

Dear Kathryn:

I am in receipt of your April 11 letter regarding various matters associated with the complaint by Sunset Ventures. This letter will respond to several points made in that correspondence.

Pursuant to your client's request, on February 4<sup>th</sup> I provided Kenneth Gatlin with a letter pursuant to which my client agreed to authorize testing of the electrical panel and operation of the lift station intended to serve condominium unit 4. Utility personnel attended that test and advised your client and its engineers that service was available to the condominium unit following trimming of the impeller, and a couple of other minor modifications to the operation of the lift station. It is my understanding that there was no dispute regarding these matters. For whatever reason, your client never undertook these modifications. The Utility has not refused to honor any obligation it has to serve condo unit 4. This "welcome news" has been known by your client since February.

Sunset Ventures is being billed based on the approved rates and charges of KW Resort Utilities. Including the Development in the Utility's certificated service area is not the agreement reached by the parties two years ago. Further, in light of your client's continued breach of the Contract, the Utility has serious questions about whether to continue service to Sunset Ventures at all, much less include it in the certificated service area.

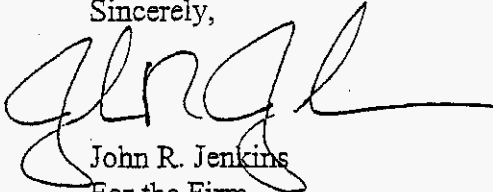
Your letter discusses of an offset or refund of \$75,060 in service availability charges. Payment of service availability charges makes one more issue your client is evidently unwilling to live with in the signed Contract. All service availability charges paid are justified. More to the point, it was not our intent in offering to work on amending the Contract to entertain a wish list of issues your client like to change now once service is resumed.



Ms. Kathryn Cowdery  
April 21, 2000  
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My client remains willing to enter into an Amended and Restated Contract for Waste Water Treatment. However, it is our position that your client has stolen service on more than one occasion, that the disconnections were justifiable, and that your client is using the PSC complaint process to secure continued service and renegotiate an existing Contract at my client's expense. Therefore, we will look to recover the costs of litigation and negotiation from your client. I look forward to a copy of your revised agreement.

Sincerely,



John R. Jenkins  
For the Firm

JRJ:dcr

cc: William L. Smith, Esq.  
Mr. Doug Carter  
Tyler Van Leuven, Esq.

KWResort/Cowdery.ltr